



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOUSING FOUNDATION OF B.C.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC RP RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to make repairs to the unit, site or property, and for a rent reduction for repairs, services or facilities agreed upon but not provided.

On November 30, 2016 the tenant, a support person for the tenant, and two agents for the landlord (the “agents”) attended at the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and documentary evidence is provided below and includes only that which is relevant to the hearing. After 63 minutes, the hearing was adjourned to allow additional time to consider evidence. An Interim Decision dated November 30, 2016 was issued which should be read in conjunction with this decision. On January 11, 2017 the hearing reconvened and after an additional 45 minutes of testimony the hearing was concluded.

Neither party raised concerns regarding the service of documentary evidence.

Preliminary and Procedural Matter

At the reconvened portion of the hearing, the niece of the tenant requested to start over again regarding the first two items discussed at length at the previous portion of the hearing. The niece of the tenant was advised that an adjournment in a dispute resolution hearing was not an opportunity to start the entire proceeding over from the start and that the hearing would be continuing where it left off at the last portion of the hearing.

Issues to be Decided

- Has the tenant provided sufficient evidence to prove that he is entitled to compensation under the *Act*, regulation or tenancy agreement?
- Has the tenant provided sufficient evidence to prove that repairs are required to the unit, site or property under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy began on December 1, 2015 and reverted to a month to month tenancy after December 1, 2016. The tenant continues to occupy the rental unit.

The tenant's monetary claim for \$9,258.00 is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Bed	\$2,383.20
2. Couch	\$1,723.62
3. Couch removal	\$250.00
4. Prescription cream	\$8.00
5. Compensation Stress	\$4,000.00
6. Replacement bedding etc.	\$893.18
TOTAL	\$9,258.00

The tenant confirmed at the outset of the hearing that he does not have tenant's insurance and that he continues to occupy the rental unit.

Regarding item 1, the tenant is claiming \$2,383.20 to replace his bed that he claims was ruined due to bed bugs. The tenant confirmed that he did not submit a receipt in support of the value of his bed. The tenant confirmed that his bed was 30 years old. The tenant confirmed that he did not submit photos of his bed to support that the bed was infested with bed bugs. The tenant's niece referred to a quote submitted in evidence in the amount of \$2,383.20 dated October 12, 2016 which indicates a bed frame in the amount of \$425.57 and a mattress in the amount of \$1,702.29. The agents responded by stating that the landlord did not agree with any portion of the tenant's monetary claim and that the landlord is not responsible for the contents of the tenant's rental unit and that is what renter's insurance would be used to protect and insure.

The landlord stated that the first time they were informed about bed bugs in writing was on August 15, 2016 and referred to an exhibit submitted in evidence. In addition, the agents affirmed that a request for inspection was forwarded to a local pest control company the next day on August 16, 2016 which was referred to in evidence. The agents stated that on August 18, 2016 they provided a notice of inspection scheduled for September 2, 2016 between 9:00 a.m. and 4:00 p.m. The agents stated that the tenant did not sign in at the information night on bed bug held on August 19, 2016. The tenant claims he attended but did not sign the sign-in form.

The agents referred to another exhibit which indicated that the rental unit was clear but that the tenant reports that bed bugs were on the couch and spotting seen but not live bugs so removal of couch was suggested. The agents clarified that the tenant's rental unit was treated for bed bugs based on the tenant's claim there was bed bugs and not due to any bed bugs being found in the tenant's rental unit. On September 7, 2016 the first treatment was scheduled for September 16, 2016 although the tenant stated he "didn't think so" regarding that specific date.

On September 16, 2016 the agents stated another inspection was performed in the rental unit and that the inspection report indicated that nothing was found. The agents referred to an exhibit in evidence in support of their testimony. The tenant claimed that it was "an error".

Further evidence was submitted regarding additional treatments with no bed bugs being found in the rental unit. The tenant claims there was bed bugs in the rental unit however no photographic evidence was submitted by the tenant to support this testimony.

Regarding item #2, the tenant has claimed \$1,723.62 for the cost of a couch and confirmed that although the tenant did not have a separate couch, the tenant had a "sofa bed" so the tenant submitted both a claim for a bed including a bed frame and mattress plus this portion of their claim for a couch. The tenant did not provide any receipts for a couch however the niece testified that quote provided was the cheaper out of four couches they viewed. No photographic evidence was provided for this portion of the tenant's claim.

Regarding item #3, the tenant has claimed \$250.00 for the cost of removing the tenant's sofa bed from the rental unit. The tenant did not provide a receipt or the email mentioned by the tenant and the tenant's niece in support of this portion of the tenant's claim. The tenant claims that he felt threatened to remove his couch based on a

document received by the landlord. The document was reviewed during the hearing which reads in part regarding the September 2, 2016 pest control treatment:

“...staff be onsite to give access if the tenant cannot be there. Tenants who fail to comply with HFBC and Local pest may receive a notice to end tenancy...”

[reproduced as written]

Regarding item #4, the tenant has claimed \$8.00 for prescription cream for which the tenant did not provide a receipt or a doctor's prescription.

Regarding item #5, the tenant has claimed \$4,000.00 for compensation for “stress” related to bed bugs in his rental unit that impacted his quiet enjoyment. The tenant's niece stated that the amount of \$4,000.00 was arrived at based on starting with \$2,000.00 and that she was encouraged to increase that amount from an Information Officer. The tenant's niece testified that due to neglect the tenant suffered the tenant should be entitled to receive 100% of his rent back from December 2015 to October 2016. The tenant's niece claims that the tenant was unable to bring in guests due to bed bugs and that the family missed out on a Thanksgiving dinner as the tenant would normally host dinners including Christmas dinner.

The tenant claims that he was forced to sleep on chairs and had a lack of consistent sleep patterns and referred to one photo submitted in evidence which showed chairs in the rental unit. The tenant affirmed “I am 87 years old and it was just terrible.” The tenant claims that he had 15-20 bites on his legs while he was sleeping in the chairs due to bed bugs. The tenant's niece confirmed that no photographic evidence was submitted to support the bug bites alleged by the tenant. The tenant confirmed that he did not make any attempts to get another bed and that he was afraid to buy a bed if the bed bugs would just infest it again. The tenant stated that he believed everything he was told by the agents and that he was first bitten in the spring until the bed bug treatment in September. The tenant claims that in July or August he let the landlord know about bed bugs and that the first bites were in the spring but could not recall when specifically.

The tenant referred to a document which the tenant's niece stated supports that the rental unit building was reported to have had bed bugs in 2009. The tenant affirmed that he lost pounds due to the stress and that he suffered from heart palpitations. The tenant confirmed that the tenant did not support medication information to support the concern related to heart palpitations. The tenant's niece claims that seniors get taken advantage of and that the tenant takes all notes from the landlord seriously.

The agents stated that the tenant first reported bed bugs in writing on August 15, 2016 and that they responded as quickly as possible. The agents stated that in regards to the 2009 document from the internet that indicates the rental building had bed bugs six years before the tenancy began, the agents stated that there has been no bed bug problem since 2009 and no reports of bed bugs until the tenant complained. The landlords stated that they rely on the professional pest control company advice on how to treat and manage any suspected bed bug or other pest complaint.

The agents stated that the notice to the tenant regarding a recommendation to remove the sofa bed was a recommendation from the pest control company based on the tenant's complaints and that the replacement of that sofa bed is the sole responsibility of the tenant. The agents also reiterated that no bed bugs were found in the rental unit but they decided to treat anyways given the complaints by the tenant.

Regarding item #6, the tenant has claimed \$893.18 to replace his bedding. The tenant and the tenant's niece confirmed that no receipts were submitted in evidence but that the tenant purchased his bedding between five and six years ago at The Bay. The tenant then changed his testimony by stating that they "were gifts".

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Items #1 to #6 of tenant's claim – Having carefully considered all of the testimony and exhibits presented during the hearing which lasted a total of 108 minutes over two different hearing dates, I find the tenant has failed to meet the burden of proof with all six items as claimed. I am not satisfied based on the evidence presented that the rental unit was infested with bed bugs. Furthermore, even if the rental unit did have bed bugs, which I have not found, I find that the landlord did not breach the *Act* as I find the landlord's response to be reasonable given that the tenant first wrote to the landlord on August 15, 2016 and treated the rental unit in what I find to be a reasonable timeframe given the number of units in the building. I further find that the tenant's recollection of events to be vague and inconsistent as the tenant provided vague timeframes and conflicting details during the hearing. Two such examples were claiming that he spoke to the landlords about bed bugs but could not recall a specific date or month, and that his bedding was purchased at The Bay and later changed his testimony that the bedding was a gift.

Based on the above, I find the tenant has provided insufficient evidence to support any of the items he has claimed for in his application and that the tenant has failed to prove that the landlord breached the *Act*, regulation or tenancy agreement. In addition, I find that the tenant failed to comply with section 7 of the *Act* by minimizing the damage or loss by failing to carry tenant's insurance. The landlord is not the tenant's insurer and the tenant is expected to carry tenant's insurance to protect their personal belongings.

Therefore, **I dismiss** tenant's claims in full due to insufficient and contradictory evidence, **without leave to reapply**.

Conclusion

The tenant's application is dismissed in full due to insufficient and contradictory evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 3, 2017

Residential Tenancy Branch